$33,521.33 together with interest thereon at the rate of 12% pa from 23 August 1987 to 7 March 1990, in exchange for a tripartite transfer executed by the defendants in favour of the plaintiffs' sub-purchaser Chia Ka Man. I further direct that the time limited for completion of the transaction by the plaintiffs be 30 days from the date of this judgment, time being of the essence, and that the ex parte interim injunction dated 5 December 1986 remains in force until such date after which it shall be deemed dissolved.

The plaintiffs are not entitled to any of the other declarations or orders they have claimed by the originating summons herein. In particular the plaintiffs are not entitled to interests for late completion, damages or otherwise any loss which the plaintiffs may have to pay their sub-purchaser Chia Ka Man due to the delay and/or refusal of the defendants in failing to complete the original purchase. The inability of the plaintiffs to convey the flat to their sub-purchaser Chia Ka Man is entirely due to the plaintiffs' breach of the agreement and not the defendants'.

In the premises of my findings I would conceive there should be no order for costs. I am however prepared to hear counsel. After hearing arguments I award the plaintiffs one-third of the taxed costs in these proceedings.

Order accordingly.

Solicitors: *Keh Kee Guan & Co; Yap & Yap.*

Reported by *Teoh Ai Lin*

MALAYSIAN REPORTS

Goh Ah Bah v Timbalan Menteri Dalam Negeri & Anor and other appeals

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NOS 44-17-90, 42-20-90, 44-110-90 AND 44-47-89
ABDUL HAMID OMAR LP, HASHIM YEOP A SANI CJ (MALAYA) AND MOHAMED AZMI SCJ
13 FEBRUARY 1991

Preventive Detention — Fresh detention order — Validity of — Detention orders made against appellants — Orders extended — Extension orders later revoked under s 11B(1) of Dangerous Drugs (Special Preventive Measures) Act 1985 — Fresh detention orders made under s 6(1) in substitution — Whether fresh detention order can replace an extension order — Effect of amendment to s 6A — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 6(1) & 11B — Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990

One of the appellants in these appeals, Goh Ah Bah, was originally detained under a detention order made by the Deputy Minister for Home Affairs under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') for a period of two years with effect from 18 May 1987. On 29 April the Deputy Minister made another order extending the detention of the appellant under s 11(1)(a)(aa) of the Act and directed the detention of the appellant for a period of two years with effect from 17 May 1989. On 3 April 1990, the Deputy Minister revoked the extension order made on 29 April 1989 and on the same date he also made a detention order under s 6(1) of the Act. This order directed the detention of the appellant for a period of 13 months. The issue common to all the appeals is the question of the power of the minister conferred by s 11B of the Act and whether or to what extent the power is affected by the Dangerous Drugs (Special Preventive Measures) (Amendments) Act 1990. The Judicial Commissioner had held that s 11B(2) of the Act did not require as a condition that a fresh order or direction must be of the same type as the one that is revoked. In a number of other cases decisions had been given contrary to the view expressed by the learned Judicial Commissioner. The appellants appealed.

Held, allowing the appeals:

(1) Section 11B(2) of the Act preserves the minister's power to make the order or direction as specifically mentioned in that section. The minister may make a fresh detention order or a fresh restriction order or a fresh direction under s 6(1) and (3) and s 11A(1) respectively of the Act in place of the order or direction revoked. The power is specific and distinct for each type of order or direction.

(2) A fresh detention order, therefore, may be made only to replace a detention order which is revoked and a fresh restriction order or direction may be made only to replace a restriction order or direction revoked. In other words, a fresh direction can be issued only to replace an existing direction which has been revoked.

(3) The new sub-s (2) of s 6A inserted by the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990 did not alter the law except in respect of the validity of the detention order or restriction in the absence of the reports. The distinction between a detention order and a restriction order still remains intact.

[**Bahasa Malaysia summary**

Seorang dari perayu-perayu di dalam rayuan-rayuan ini, Goh Ah Bah, telah pada mulanya ditahan di bawah perintah tahanan yang dibuat oleh Timbalan Menteri, Hal Ehwal Dalam Negeri, dibawah s 6(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta itu'), untuk masa dua tahun dari 18 Mei 1987. Pada 27 April 1989 Timbalan Menteri itu telah membuat satu perintah lain melanjutkan pertahanan perayu itu dibawah s 11(1)(a) (aa) Akta itu dan mengarahkan tahanan untuk masa dua tahun dari 17 Mei 1989. Pada 3 April 1990 Timbalan Menteri itu telah membatalkan perintah lanjutan itu yang dibuat pada 29 April 1989 dan pada tarikh yang sama beliau telah membuat perintah tahanan dibawah s 6(1) Akta itu. Perintah itu mengarahkan perayu ditahan untuk masa 13 bulan. Isu yang sama disemua rayuan ini adalah soalan mengenai kuasa menteri yang diberi oleh s 11B Akta itu dan sama ada dan setakat mana kuasa itu terjejas oleh Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) (Pindaan) 1990. Yang arif Pesuruhjaya Kehakiman telah berpendapat bahawa s 11B(2) Akta itu tidak memperlukan sebagai syarat bahawa perintah atau arahan yang baru itu semestinya sama seperti apa yang dibatalakan. Di dalam beberapa kes lain, keputusan telah dibuat yang berlawan dengan pendapat yang arif Pesuruhjaya Kehakiman itu. Perayu-perayu telah merayu.

Diputuskan, membenarkan rayuan-rayuan itu:

(1) Seksyen 11(B)(2) Akta itu memelihara kuasa menteri membuat perintah atau arahan seperti yang disebut dengan khusus di dalam subseksyen itu. Menteri boleh membuat perintah tahanan baru atau perintah sekatan baru atau arahan baru dibawah s 6(1) dan (3) dan s 11A(1) Akta itu seperti mana yang berkenaan mengambil tempat perintah atau arahan yang dibatalkan. Kuasa itu khusus dan berlainan untuk tiap-tiap jenis perintah atau arahan.

(2) Oleh kerana itu suatu perintah baru boleh dibuat menggantikan perintah tahanan yang dibatalkan dan suatu perintah sekatan atau arahan hanya boleh dibuat untuk menggantikan perintah sekatan atau arahan yang dibatalkan. Dengan perkataan lain, hanya satu arahan baru boleh dibuat untuk mengganti arahan yang telah dibatalkan.

(3) Subseksyen (2) s 6A yang baru yang dimasukkan oleh Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) (Pindaan) 1990 tidak menggubah undang-undang selain mengenai kesahan perintah tahanan atau perintah sekatan yang dibuat tanpa lapuran yang berkenaan. Perbezaan antara perintah tahanan dan perintah sekatan masih kekal diadakan.]

Cases referred to

1 *Hong Siew Sin & Anor* v *Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1990] 2 MLJ 90 (refd)
2 *Poh Chin Kay* v *Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor and other appeals* [1990] 2 MLJ 297 (refd)
3 *Low Hai See* v *Minister for Home Affairs* [1990] 2 CLJ 4 (refd)
4 *Moo Meow Fatt* v *Minister for Home Affairs & Ors* (Permohonan Jenayah Mahkamah Tinggi Bil 44-17-90) (unreported) (refd)
5 *Goh Ah Bah* lwn *Timbalan Menteri Dalam Negeri, Malaysia & Satu Yang Lain* [1991] 1 MLJ 233 (refd)
6 *Chew Phang Oo* v *Timbalan Menteri Dalam Negeri, Malaysia* [1991] 1 MLJ 58 (refd)
7 *Choo Fook Kam* v *Inspector General of Police & Ors* (Selangor Criminal Appeal No 44-24-89) (unreported) (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 s 11B
Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990

Appeal from: Criminal Application Nos 44-17-90, 44-47-89 and 44-20-90 (High Court, Penang), and Criminal Application No 44-110-90 (High Court, Muar)

M Athimulan for the appellants in Criminal Appeal Nos 05-133-90 and 05-135-90.

Karpal Singh (V Shanmugam with him) for the appellants in Criminal Appeal Nos 05-76-90 and 05-151-90.

Suriyadi bin Halim Omar (Deputy Public Prosecutor) *(Noorbahari bin Baharuddin* and *Jalaldin bin Hussain* with him) for the respondents.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): As background to these appeals we would refer to Goh Ah Ba, the applicant in Penang High Court Criminal Application No 44-17-90 and one of the appellants in the appeals before us, who was originally detained under an order of the Deputy Minister for Home Affairs under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The detention order was made on 16 May 1987 directing the detention of the applicant for a period of two years at the Pusat Pemulihan Akhlak, Muar, with effect from 18 May 1987.

On 29 April 1989 the Deputy Minister made another order extending the detention of the said applicant under s 11A(1)(a)(aa) of the Act and directed the detention for a period of two years with effect from 17 May 1989.

On 3 April 1990, the Deputy Minister revoked the extension order made on 29 April 1989. On the same date the Deputy Minister also made a detention order under s 6(1) of the Act. That order directed the detention of the said applicant for a period of 13 months.

The Act was amended by the Dangerous Drugs (Special Preventive Measures) (Amendment) Act 1990 (Amendment Act A766). The amendment Act A766, inter alia, provides for the validation of orders rendered invalid by this court in *Hong Siew Sin* v *Menteri Hal Ehwal Dalam Negeri & Ors*[1] and *Poh Chin Kay* v *Minister for Home Affairs & Ors*.[2] This court also struck down detention orders purportedly made by virtue of the implied powers under s 11B of the Act — see *Low Hai See* v *Minister for Home Affairs*.[3]

Section 11B of the Act 316 provides as follows:

> (1) Notwithstanding anything contained in this Act, the Minister may at any time revoke any detention order made under subsection (1) of section 6, or any suspended detention order, or any direction under subsection (1) of section 11A for the extension of the duration of any such order, if he deems it just or fit to do so.

(2) Any revocation under subsection (1) shall be without prejudice to the validity of the order or direction before its revocation or to anything done thereunder, or to the power of the minister to make *a fresh detention order* under subsection (1) of section 6 or *a fresh restriction order* under subsection (3) of section 6 or *a fresh direction* under subsection (1) of section 11A in respect of the person against whom the order or direction which is revoked was made or given. (Note emphasis.)

The issue which is common in all these appeals is a question of the power of the minister conferred by s 11B of the Act and whether or to what extent the power is affected by the amendment Act A766 which came into force on 3 April 1990. The issue is as reflected in the observation of KC Vohrah J in *Moo Meow Fatt* v *Minister for Home Affairs & Ors*:[4]

> It will be noticed that the power to make a fresh order or fresh direction is '*in respect of the person against whom the order or direction which is revoked was make (sic) or given*'. Reading the words which have been italicized it would mean that a fresh order or fresh direction must correspond with the original order or direction revoked; that is to say, if what is revoked, say, is a direction under s 11A(1), then the (sic) only a fresh extension order may be made, not a fresh order under s 6(1).

The learned Judicial Commissioner, Dato' Abdul Hamid bin Hj Mohamed, in *Goh Ah Ba* lwn *Timbalan Menteri Dalam Negeri, Malaysia & Satu Yang Lain*[5] said at p 237:

> Dalam penghakiman saya, sub-s (2) tidak mensyaratkan bahawa perintah atau arahan baru yang dibuat itu mestilah dari jenis yang sama dengan yang telah dibatalkan.

It was the ruling of the learned Judicial Commissioner that sub-s (2) of s 11 of the Act 'does not require as a condition that a fresh order or direction must be of the same type as the one that is revoked.' The issue is now in focus.

It is clear that the learned Judicial Commissioner did not share the view expressed *obiter* by KC Vohrah J in *Moo Meow Fatt*.[4]

In *Chew Phang Oo* v *Timbalan Menteri Dalam Negeri, Malaysia*[6] the learned judge there (Datuk Edgar Joseph Jr) also came to a different conclusion from that of the learned Judicial Commissioner. The impugned detention order in that case was dated 12 March 1990 authorizing the continued detention of the applicant for the period of 18 months from that date. In his judgment the learned judge said [at p 62]:

> As a matter of first impression, the words 'a fresh detention order or . . . a fresh direction as is mentioned under sub-s (1) . . .' can only mean another order or direction of the same kind as that revoked. To illustrate the minister can only substitute a fresh detention order upon revocation of a previous detention order or substitute a fresh direction that the duration of a detention order be extended upon revocation of a previous direction of the same kind.

As the issue was more lucidly examined in his judgment, it is best that the relevant part of the judgment be reproduced:

> The question therefore arises whether the amendment effected by s 3(1)(b) of the Act of 1990 to s 6A, ie by the insertion of s 6A(2), can apply to exempt the executive from having before it the fresh reports concerned, before substituting a detention order for a direction.
>
> It is necessary to reproduce s 6A(2) which provides:
>
> '(2) No fresh detention order or fresh restriction order referred to in subsection (2) of section 11B shall be invalid or inoperative by reason that no fresh report has been submitted under subsection (3) of section 3 and subsection (4) of section 5 or that detention order or restriction order was made on the same ground as the previous detention order or restriction order.'
>
> It will be seen that s 6A(2) applies only to fresh detention orders or fresh restriction orders.
>
> Having regard to my view that the detention order in this case was not a fresh detention order because it was not made in substitution for a previous detention order but instead was in substitution for a direction extending the period of detention, I fail to see how s 6A(2) can be of any assistance to the minister.
>
> It follows that the principles in *Poh Chin Kay*'s case would continue to apply to the present case and so the necessity for fresh reports by the police officer and the enquiry officer under ss 3(3) and 5(4) of the Act of 1985 respectively, cannot be dispensed with.

In another case dealing with the same matter before Shankar J in *Choo Fook Kam* v *Inspector General of Police & Ors*[7] the learned judge said at p 22 of his judgment:

> What was revoked on 31 January 1990 was not the original detention order, but the direction for the extension which was made on the same grounds as the original order. What followed this was not a fresh direction under s 11A(1)(aa) but a 'fresh' order under s 6(1) of the Act.

At p 23 he said:

> In terms of validity we once again come back to the question of power and I cannot find anything in s 6(1) which authorizes the issue of a fresh detention order in place of one totally revoked.

The question raised before the learned Judicial Commissioner and the learned judges in their separate cases referred to earlier can be answered simply as follows.

Section 11B(2) of the Act preserves the minister's power to make the order or direction as specifically mentioned in that subsection. The minister may make a fresh detention order or a fresh restriction order or a fresh direction under s 6(1) and (3) and s 11A(1) respectively of the Act in place of the order or direction evoked. The power is specific and distinct for each type of order or direction.

The very language of sub-ss (4) and (5) of s 6 of the Act shows quite clearly the distinction made by the law

between a detention order and a restriction order. Therefore a fresh order may be made only to replace the detention order which is revoked and a fresh restriction order or direction may be made only to replace a restriction order or direction revoked. In other words, a fresh direction can be issued only to replace an existing direction which has been revoked.

Looking at the new sub-s (2) of s 6A of the Act as inserted by amendment Act A766 it is quite clear that it merely states that no fresh detention order or fresh restriction order shall be rendered invalid by reason of the absence of any fresh report under sub-s (3) of s 3 and sub-s (4) of s 5 or that the order was made on the same grounds as the previous detention order or restriction order. The new provision was clearly intended to overcome what this court had required to be done in *Poh Chin Kay*,[2] namely, that a detention order or direction *made afresh* would require compliance with the requirements of s 6 of the Act.

Thus the new sub-s (2) of s 6A inserted by Act A766 did not alter the law except in so far as respects the validity of the detention order or restriction in the absence of the reports. The clear distinction between a detention order and a restriction order still remains intact. The appeals are accordingly allowed.

Appeals allowed.

Solicitors: *Shan & Gooi; Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Ang Gin Lee v Public Prosecutor

SUPREME COURT (KUCHING) — CRIMINAL APPLICATION NO 07-19-90
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND JEMURI SERJAN SCJJ
1 FEBRUARY 1991

Criminal Procedure — Order made by magistrate under s 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 —Whether there is appeal to High Court — Whether High Court can exercise its powers of revision and review — Order not made in a criminal case or matter — No power of appeal or revision — Criminal Procedure Code (FMS Cap 6), s 307(i) — Subordinate Courts Act 1948, s 85 — Courts of Judicature Act 1964, ss 3, 26, 33 & 35

In this case the applicant and three others had been ordered by a magistrate to undergo treatment and rehabilitation at a drug rehabilitation centre for a period of two years from the date of the order. The order was issued by the magistrate pursuant to s 6(1)(a) of the Drug Dependants (Treatment and Rehabilitation) Act 1983 ('the Act'). The applicant filed an appeal to the High Court against the order of the magistrate. The learned judge dismissed the application. The applicant thereupon applied to refer questions of law for the determination of the Supreme Court under s 66(1) of the Courts of Judicature Act 1964. The questions were:

(1) Whether an order made by a learned magistrate under s 6(1)(a) of the Act is an order which falls within the definition of 'order pronounced by any Magistrate's Court in a criminal case or matter' as described in s 307(i) of the Criminal Procedure Code (FMS Cap 6) and therefore there is a right of appeal against such order as provided for under s 307(i) of the Code.

(2) If the answer to question 1 above is in the negative, then does the High Court have power either under s 35 of the Courts of Judicature Act 1964 or under its inherent jurisdiction to review the decision of the learned magistrate and make such orders as the High Court might have made as it may consider just for the disposal of the appeal.

Held, answering both questions in the negative:

(1) The legislative scheme of s 6 of the Act viewed with the provisions of criminal jurisdiction and appeal in the Subordinate Courts Act 1948 and the Courts of Judicature Act 1964 show quite clearly that the order of the magistrate under s 6 of the Act is not an order appealable to the High Court.

(2) The order made by a magistrate in this case is not an order pronounced by a magistrate's court in a criminal case or matter for the purpose of s 307(i) of the Criminal Procedure Code.

(3) Section 31 of the Courts of Judicature Act 1964, confers on the High Court powers of revision in respect of criminal proceedings and matters in the subordinate courts in accordance with any law for the time being relating to criminal procedure; it is obvious that the answer to question 2 must also be in the negative.

(4) Section 35 of the Courts of Judicature Act 1964 confers general supervisory powers on the High Court over the subordinate courts. This provision is to be construed as no more than providing for jurisdictional basis. Read in the context of ss 31, 32 and 33 of the Act is would seem that s 35 is particularly aimed at providing supervision in criminal and civil proceedings at any stage of the trial in a subordinate court.